

FILED WITH LRC TIME: <u>NOON</u>
MAY 26 2017
Emily B Caudill REGULATIONS COMPILER

1 TOURISM, ARTS AND HERITAGE CABINET

2 Department of Fish and Wildlife Resources

3 (Amendment)

4 301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

5 RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

6 STATUTORY AUTHORITY: KRS 150.025(1)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department

8 to promulgate administrative regulations to establish seasons for the taking of fish and

9 wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or

10 transporting of fish and wildlife, and to make these requirements apply to a limited area.

11 This administrative regulation establishes the requirements for the department's Asian

12 Carp and Scaled Rough Fish Harvest Program.

13 Section 1. Definitions. (1) "Asian carp" means:

14 (a) Bighead carp;

15 (b) Black carp;

16 (c) Grass carp; or

17 (d) Silver carp.

18 (2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

1 (3) "Program participant" means a commercial fisherman who is:

2 (a) Enrolled in the Asian carp and scaled rough fish harvest program; and

3 (b) Fishing in restricted water.

4 (4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155,  
5 where:

6 (a) Commercial fishing is prohibited; or

7 (b) Commercial fishing with gill or trammel nets is prohibited.

8 (5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish  
9 pursuant to 301 KAR 1:060.

10 (6) "Whip net set" means a gill or trammel net that is set to encircle and harvest Asian  
11 carp and scaled rough fish.

12 Section 2. Qualifications. A commercial fisherman shall:

13 (1) Contact the department and request to be included in the program; and

14 (2) Possess a valid Kentucky commercial fishing license.

15 Section 3. Program Participant Requirements. A program participant shall:

16 (1) Call the department at 800-858-1549 prior to the requested fishing date and  
17 provide the information established in paragraphs (a) through (e) of this subsection:

18 (a) The participant's name;

19 (b) The fish buyer's name and phone number;

20 (c) Date requested;

- 1 (d) The location in the restricted water to be fished; and
- 2 (e) The name or location of the boat ramp that will be used;
- 3 (2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35)
- 4 percent scaled rough fish over a one (1) month period, except that a commercial
- 5 fisherman whose license fee has been waived pursuant to Section 4 of this administrative
- 6 regulation shall only harvest Asian carp and not retain any by-catch;
- 7 (3) Only fish:
- 8 (a) On dates approved by the department; and
- 9 (b) At a location approved by the department;
- 10 (4) Immediately notify the department if the participant changes the:
- 11 (a) Fishing location in the restricted water body; or
- 12 (b) Boat ramp being used;
- 13 (5) Only use a whip net set:
- 14 (a) With a minimum bar mesh size of three and one-quarter (3.25) inches;
- 15 (b) That is always tended by a program participant when set less than three (3) feet
- 16 below the surface of the water;
- 17 (c) That is not left unattended by a program participant for more than six (6) hours
- 18 when set at least three (3) feet below the surface of the water from April 1 through
- 19 September 30; and
- 20 (d) That is not left unattended by a program participant for more than eight (8) hours

1 when set at least three (3) feet below the surface of the water from October 1 through  
2 March 31;

3 (6) Complete and submit to the department a Daily Harvest and Release Summary Card  
4 immediately after each day's fishing;

5 (7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in  
6 Section 2 of this administrative regulation;

7 (8) Immediately release all by-catch;

8 (9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant  
9 to the requirements of 301 KAR 1:155; and

10 (10) Be suspended from the program:

11 (a) For a three (3) month period beginning on the first day of the next month if the  
12 minimum requirements established in subsection (2) of this section are not met; and

13 (b) For a period of one (1) year beginning on the first day of the next month if the  
14 requirements are not met a second time.

15 Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees  
16 as established in 301 KAR 3:022 shall be waived for a commercial fisherman who only  
17 harvests Asian carp in restricted waters.

18 Section 5. Department Requirements. (1) The department shall:

19 (a) Maintain a list of program participants and their contact information, which shall be:

20 1. Provided to known fish buyers; and

2. Updated at least weekly; and

(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.

(2) The department shall approve a qualified fishing request by assigning:

(a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

(b) The time period when fishing may occur, not to exceed a three (3) consecutive day period.

(3) The department shall not approve a fishing request for reasons established in paragraphs (a) through (c) of this subsection:

(a) Higher than normal by-catch is likely to occur at that location and time;

(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time; or

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

4. A Saturday or prior to sunset on a Sunday from April 1 through September 30.

Section 6[5]. Program disqualification. (1) A program participant whose commercial

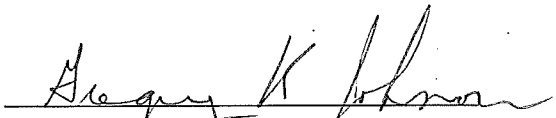
1 fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be  
2 disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program  
3 while that license is revoked or suspended.

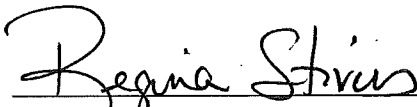
4 (2) Any participant who is disqualified from participation in the program may appeal  
5 the decision in accordance with KRS Chapter 13B.

6 Section 7[6]. Incorporation by Reference. (1) "Daily Harvest and Release Summary  
7 Card", 2011 Edition, is incorporated by reference.

8 (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
9 law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane,  
10 Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

Approved by the Fish and Wildlife Commission

  
\_\_\_\_\_  
Gregory K. Johnson, Commissioner  
Department of Fish and Wildlife Resources

*on behalf of*   
\_\_\_\_\_  
Don Parkinson, Secretary  
Tourism, Arts and Heritage Cabinet

Date: 5.24.17

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through July 31, 2017.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Mark Cramer  
Department of Fish and Wildlife Resources  
Arnold L. Mitchell Building  
#1 Sportsman's Lane  
Frankfort, Kentucky 40601  
(502) 564-3400 FAX (502) 564-0506  
Email: [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov)



## **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program

Contact Person: Mark Cramer

Email Address: mark.cramer@ky.gov

Phone: 502-564-3400

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment waives the commercial fishing license fees for those fishermen who intend to harvest Asian carp only.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide an increased incentive to resident and nonresident commercial fishermen to harvest Asian carp before the spawning season for the two-year old age class of these fishes. It is critical that an increased number of commercial fishermen assist the department in controlling these invasive exotic species in order to immediately protect Kentucky's aquatic environments.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d)

above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect potential commercial fishermen who are willing to exclusively target their efforts toward the capture and control of Asian carp. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Resident and nonresident commercial fishermen who wish to have their license fees waived will have to target their efforts at removing only Asian carp. They will not be able to keep other rough fish.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen to participate in this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen who wish to participate will benefit by receiving a free commercial fishing license.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to the department to implement this administrative regulation.

(b) On a continuing basis: There now will be no continual cost to the Department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? (Explain why or why not). Yes. Tiering is applied to this regulation because commercial fishermen who wish to only catch Asian carp will have their license fees waived provided they do not keep other rough fish.

## **FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

Regulation Number: 301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program

Contact Person: Mark Cramer

Email address: mark.cramer@ky.gov

Phone number: 502-564-3400

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement Division will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: